

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

GREGORY A. KONRATH,)
)
Plaintiff,)
)
vs.) CAUSE NO. 3:16-CV-667
)
ERIC HUNERYAGER,)
)
Defendant.)

OPINION AND ORDER

Gregory Konrath, a *pro se* prisoner, filed a complaint against his former criminal defense attorney, Eric Huneryager. (DE 1.) Konrath alleges Attorney Huneryager provided constitutionally ineffective assistance of counsel and also committed legal malpractice during his representation of Konrath from July 2014 through September 2015. (DE 1). Pursuant to 28 U.S.C. § 1915A, the court must review the complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. The court applies the same standard as when deciding a motion to dismiss under FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6). *Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006).

Konrath has recently become an overactive litigator. In the past three months, he has initiated 38 lawsuits. Of those, six, including this one, have been brought against Attorney Huneryager.

Konrath v. Huneryager, 3:16-CV-474 (N.D. Ind. closed Aug. 5, 2016); *Konrath v. Huneryager*, 3:16-CV-489 (N.D. Ind. closed Aug. 17, 2016); *Konrath v. Huneryager*, 3:16-CV-539 (N.D. Ind. closed Sept. 22, 2016); *Konrath v. Huneryager*, 3:16-CV-623 (N.D. Ind. filed Sept. 12, 2016); *Konrath v. Huneryager*, 3:16-CV-679 (N.D. Ind. filed Oct. 5, 2016). Upon review of these cases, this is not the first time Konrath has made these allegations against Attorney Huneryager. And, while Konrath has voluntarily dismissed three of these cases, three remain pending.

Notably, Konrath's claims against Huneryager in this case are the same as those currently pending before Judge Philip P. Simon in *Konrath v. Huneryager*, 3:16-CV-623 (N.D. Ind. filed Sept. 12, 2016). It is malicious for Konrath to file this lawsuit when he already has a duplicative case pending. See *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993) (it is malicious for a plaintiff with *in forma pauperis* status to file a lawsuit that duplicates allegations of another pending lawsuit brought by the same plaintiff) and *Lindell v. McCallum*, 352 F.3d 1107, 1109 (7th Cir. 2003) (suit is "malicious" for purposes of Section 1915A if it is intended to harass the defendant or is otherwise abusive of the judicial process). There is simply no basis for Konrath to pursue two identical cases. This case will be dismissed so that he can pursue these claims against Attorney Huneryager solely in 3:16-CV-623.

For these reasons, this case is **DISMISSED** as malicious pursuant to 28 U.S.C. § 1915A(b)(1). The dismissal is without prejudice to Konrath's prosecution of his claims in Case No. 3:16-CV-623.

DATED: October 12, 2016

/s/RUDY LOZANO, Judge
United States District Court